

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PAT WHISENHUNT,)
)
Plaintiff,)
vs.)
)
TARGET STORES, INC.,)
)
Defendant.)

No. 71-C-176 ✓
CIVIL

FILED
SEP 30 1971 *W*
JOHN H. POE, Clerk
U. S. DISTRICT COURT

O R D E R

This cause came on for consideration by the Court upon .
Motion for Summary Judgment filed herein by the defendant, Target
Stores, Inc., together with Brief in support thereof, and

The Court having carefully considered the file in this
cause and the Amended Complaint filed herein on August 31, 1971,
is of the opinion that said defendant's Motion for Summary Judgment
should be denied, and

IT IS SO ORDERED.

Dated this 29th day of September, 1971.

Luther Bohannon
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WILLIAM JOSEPH LEE,

Petitioner,

vs.

RAY H. PAGE, Warden, Oklahoma
State Penitentiary, McAlester,
Oklahoma,

Respondent.

NO. 71-C-275

FILED
SEP 27 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

O R D E R

The Court has for consideration the pro se, in forma pauperis petition for writ of habeas corpus of William Joseph Lee and the response thereto. Upon careful examination of the file herein, the Court finds that petitioner is an inmate of the Oklahoma State Penitentiary, admittedly having been found guilty of rape in the first degree in the first stage of a jury trial in Tulsa County District Court, Case No. 23783; and thereafter, in the second stage of the trial, an indeterminate sentence of 20 to 65 years having been fixed by the jury on March 21, 1969. On appeal, the Oklahoma Court of Criminal Appeals, Case No. A-15234, affirmed the conviction. However, the appellate Court did modify the indeterminate sentence to 15 to 45 years because the trial Court, in the second stage of the trial regarding the sentence, instructed the jury of the good time credits provided for prisoners under the predecessor T. 57 O.S.A. § 138 (1970). Lee v. State, Okl. Cr., 485 P.2d 482 (1971).

Petitioner asserts the lone ground for this Court's consideration that the instruction regarding good time credits was a breach of his constitutional rights to due process of law, a fair trial, and equal protection of the law as guaranteed by the 5th, 6th, and 14th Amendments of the Constitution. He alleges that the predecessor 57 O.S. § 138 is a statute void because it is a legislative encroachment upon judicial power, and the reduction in sentence, granted by the appellate Court because the original sentence was imposed after an erroneous instruction, did not cure such error, but was only picayune, unmeaningful, and unequal relief when compared to that extended to other defendants in like circumstances.

This problem is not new to the Oklahoma Courts. The said 1958

statute, prior to its amendment in 1970, read in part:

" . . . this section shall be read to the jury as part of the court's instructions in any trial to a jury, after a finding of guilty of a crime for which any part of the punishment may be imprisonment in the penitentiary, and . . . the provisions of this section may be commented upon in the argument of any such trial."

This provision of the statute was held an unconstitutional encroachment by the legislature upon the judicial powers of the State. *Kerr v. State, Okl. Cr.*, 462 P.2d 268 (1969); *Williams v. State, Okl. Cr.*, 461 P.2d 997 (1969). The legislature amended the statute by excluding such provision in 1970. Further, the Oklahoma Courts have held that even though an instruction on good time credits under the previous statute is error, that where such instruction was given after a determination of guilt of the crime charged had been made, such instruction is not reversible error and justice requires only a reduction of sentence. *Kerr v. State* and *Williams v. State*, *Id.*

Federal Courts will generally follow interpretations of the Constitution and the laws of a state by the highest Court of the State unless such interpretation is inconsistent with the fundamentals of liberty and justice. *Newman v. Rodriguez*, 375 F.2d 712 (10th Cir. 1967). In complete agreement with the Oklahoma State Court decisions set out above, this Court finds that petitioner has not been deprived of a fair trial in the constitutional sense so as to provide relief by Federal habeas corpus. *Linebager v. State of Oklahoma*, 404 F.2d 1092 (10th Cir. 1968); *Pierce v. Page*, 362 F.2d 534 (10th Cir. 1966); *Ortiz v. Baker*, 411 F.2d 263 (10th Cir. 1969).

The United States Supreme Court has rejected the doctrine that a prisoner, whose guilt is established by a regular verdict, may escape punishment because error was committed in passing sentence. In *re Bonner*, 151 U.S. 242, 260 (1894). Further, that Court has approved the correction of errors or defects in sentences and has cited with approval that, "the Constitution does not require that sentencing should be a game in which a wrong move by the Judge means immunity for the prisoner." *King v. U.S.*, 98 F.2d 291, 296 (D.C.Cir., 1938); *Bozza v. U.S.*, 330 U.S. 160, 167 (1947).

The proven commission of a specified crime is the basis for sentencing. The second or sentencing stage of the trial in Oklahoma is

for the sole and only purpose of fixing sentence. Upon conviction the defendant is subject to whatever loss of liberty the legislature has prescribed for his crime, the fixing of penalties for crimes being a legislative function. What constitutes an adequate penalty is a matter of legislative judgment and discretion; and, unless the penalty prescribed is clearly and manifestly cruel and unusual, the Courts will not interfere therewith. *McCleary v. Hudspeth*, 124 F.2d 445 (10th Cir. 1941). It cannot, then, be said that a sentence within the range of punishments authorized by the State law for the crime charged denies due process of law or any other constitutional right. "The Due Process Clause of the Fourteenth Amendment does not, nor does anything in the Constitution, require a State to fix or impose any particular penalty for any crime it may define or to impose the same or 'proportionate' sentences for separate and independent crimes." *Williams v. Oklahoma*, 358 U.S. 576 (1959) rehearing denied 359 U.S. 956.

The Court finds that the petitioner, William Joseph Lee, was found guilty by a jury of rape in the first degree. The sentence imposed was within the permissible range of punishment for such offense under Oklahoma Statute, 21 O.S.A. § 1115 (1965); the Oklahoma indeterminate sentence Act, 57 O.S.A. § 353 (1963); and the increased punishment for a second and subsequent offense, 21 O.S.A. § 51 (1968). The Court further finds that the challenged instruction on good time credits occurred in the second stage of the proceedings after guilt had been established. Therefore, the instruction did not deprive petitioner of due process, a fair trial, or equal protection of the law in the federal constitutional sense. The modification of the sentence served to correct any error that may have been committed, i.e., any increase in punishment the jury may have assessed because of the instruction. The sentence as originally imposed, as well as the reduced sentence, are both within the statutory limits of punishment fixed for the crime of which defendant had been found guilty. The punishment prescribed is not cruel and unusual. Therefore, the sentence is not a basis for habeas corpus relief in this Court. The Court further finds that there is no constitutional requirement that prisoners charged under the same statute, or different statutes, should receive like or comparable sentences, so long as each sentence imposed is within the range provided by law. For the reasons

above set forth, the Court finds that an evidentiary hearing is not required and that the petition for writ of habeas corpus of William Joseph Lee is without merit and should be denied.

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of William Joseph Lee be and it is hereby denied and the cause of action is dismissed.

Dated this 23rd day of September, 1971, at Tulsa, Oklahoma.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

VERNON S. FOYE,

Petitioner,

-vs-

STATE OF OKLAHOMA, et al.,

Respondents.

Case No. 71-C-301 Civil

F I L E D

SEP 27 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

DAN L. GONZALES,

Petitioner,

-vs-

STATE OF OKLAHOMA, et al.,

Respondents.

Case No. 71-C-302 Civil

C O N S O L I D A T E D

DARREL RAY TUCKER,

Petitioner,

-vs-

STATE OF OKLAHOMA, et al.,

Respondents.

Case No. 71-C-306 Civil

DONALD K. WILLIAMS,

Petitioner,

-vs-

STATE OF OKLAHOMA, et al.,

Respondents.

Case No. 71-C-307 Civil

O R D E R

Petitioners in the above-captioned cases seek relief on the identical ground that the reading of 57 Okl.St.Ann. §138 (1968) to the jury is error of federal constitutional dimensions. They have requested the Court to consolidate their cases for this reason and they ask that they be permitted to rely on the authorities and argument filed in Lee v. State of

Oklahoma, Case No. 71-C-275 pending in this Court.

It appears in each of the above cases, that the Petitioners have exhausted their available State remedies in compliance with 28 U.S.C.A. §2254(b). Petitioners' cases which have been assigned or transferred to the undersigned Judge will therefore be consolidated before this Court and reliance on the authorities and arguments filed in Lee v. State of Oklahoma, supra, is granted and the same have been considered.

This Court had occasion to recently consider whether the statutorily-required reading of 57 Okl.St.Ann. §138 to the jury in connection with an accused's punishment raises a federal constitutional ground for relief. In Potter, et al. v. State of Oklahoma, et al., ____ F. Supp. ____ (No. 71-112 Civil, ED Okl. dated August 18, 1971), it was urged that as the Oklahoma Court of Criminal Appeals had ruled 57 Okl.St.Ann. §138 (1968) unconstitutional under the Oklahoma Constitution, any sentence determined by the jury under this instruction is void.^{1/}

For this Court to have jurisdiction of Petitioners' consolidated claims, such claims must show a violation of a federal constitutional right. 28 U.S.C.A. §2254(a). Errors in jury instructions do not ordinarily raise federal constitutional issues. McDonald v. Sheriff of Palm Beach County, Fla., 422 F. 2d 839 (Fifth Cir. 1970). An instruction similar

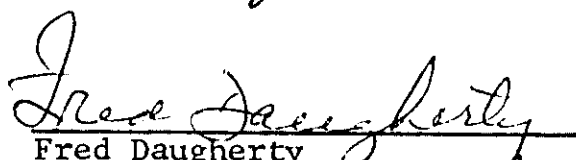
^{1/} 57 Okl.St.Ann. §138 (1968) has to do with good time and other credits which may be earned by a convict which go to shorten the absolute amount of time to be served on his sentence. In 1968, the statute was amended by a requirement that it be read to the jury in connection with their deliberations concerning sentence. This requirement was held to violate the Oklahoma Constitution in Williams v. State, 461 P. 2d 997 (Okl.Cr. 1969). In 1970, the statute was again amended to eliminate the reading requirement.

to the one here under attack was held not to raise a federal ground for relief. Linebarger v. State of Oklahoma, 404 F. 2d 1092 (Tenth Cir. 1968). Nothing in the instruction relating to good time credits, etc. operated to deprive Petitioners of a fair trial in the federal constitutional sense.

Petitioners also claim, as part of the same ground, that the action of the Oklahoma Court of Criminal Appeals in modifying sentences imposed by juries given the instruction relating to good time credits denies them equal protection of the law. Their complaint appears to be that the degree of modification in those cases where it has occurred has not been mathematically comparable or proportionate. Whether or how much the Oklahoma Court of Criminal Appeals may modify a sentence which is within statutory limits is of no concern to this Court. The time a State prisoner has to serve for his crime, so long as it is within the limits prescribed by statute, is committed to the discretion of the State courts.

Cases Nos. 71-C-301, 71-C-302, 71-C-306 and 71-C-307 are consolidated and the Clerk is directed to effect the necessary steps to consolidate them. The consolidated cases are dismissed for failure to present a claim for relief based on federal constitutional grounds.

It is so ordered this 23d day of September, 1971.


Fred Daugherty
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAMES C. BYRNE,	Petitioner,	} NO. 71-C-299
LEONARD FITCHEW,	Petitioner,	} NO. 71-C-300
LOUIS KERR,	Petitioner,	} NO. 71-C-303
VERNON JERRELL MUCK a/k/a Jerry Wayne Kennady	Petitioner,	} NO. 71-C-304
CHARLES SHOEMAKER,	Petitioner,	} NO. 71-C-305
vs.		
RAY H. PAGE, Warden, Oklahoma State Penitentiary, McAlester, Oklahoma,	Respondent.	

FILED
SEP 27 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

O R D E R

The Court has for consideration the pro se, in forma pauperis petitions for writ of habeas corpus of each petitioner as above set forth. In each petition, the lone ground asserted for this Court's consideration is that the instruction regarding good time credits under the predecessor T. 57 O.S.A. § 138 (1970) in the second, sentencing stage of the trial was a breach of the petitioner's constitutional rights to due process of law, a fair trial, and equal protection of the law as guaranteed by the 5th, 6th, and 14th Amendments of the Constitution. The Court finds that each of the above actions involves a common question of law and fact and that they should be consolidated pursuant to Rule 42(a) of the Federal Rules of Civil Procedure.

The Court finds that the petitioners have named as party respondent the State of Oklahoma, and the proper party respondent in habeas corpus proceedings is the person who has custody of the body of the prisoner; therefor, pursuant to Rule 21 of the Federal Rules of Civil Procedure, the Court motu proprio should add as the proper party respondent Ray H. Page, Warden, Oklahoma State Penitentiary, McAlester, Oklahoma.

Petitioners are inmates of the Oklahoma State Penitentiary. In the first stage of a jury trial, each petitioner was found guilty of the crime charged against him. In the second stage of each trial, the jury fixed the sentence within the limits delineated by Oklahoma Statute for the crime charged. Each petitioner appealed his conviction to the Oklahoma Court of Criminal Appeals and the conviction was affirmed in every instance, but each petitioner's sentence was modified on appeal because the trial Court in the second, sentencing stage of the proceeding gave an instruction to the jury regarding good time credits provided for prisoners under the predecessor T. 57 O.S.A. § 138 (1970). *Byrne v. State, Okl. Cr.*, 482 P.2d 620 (1971); *Fitchew v. State, Okl. Cr.*, 463 P.2d 1009 (1970); *Kerr v. State, Okl. Cr.*, 462 P.2d 268 (1969); *Kennady v. State, Okl. Cr.*, 478 P.2d 963 (1970); *Shoemaker v. State, Okl. Cr.*, 479 P.2d 621 (1971).

Upon examination of the documents submitted with the in forma pauperis affidavits of these petitioners and the applicable Oklahoma Statutes relating to each petitioner, the Court finds that the petitions on their faces should be denied and dismissed in accordance with 28 U.S.C. § 1915(d) as the Court is satisfied that the actions are frivolous and without merit. This Court has just completed extensive research on the issue posed by these petitioners in a like petition of William Joseph Lee, 71-C-275, a case in which all requested to be consolidated in order to rely on the argument and authorities therein filed. That petition was denied by Order dated September 23, 1971; and, as in that petition, these petitioners do not raise a claim for relief of federal constitutional dimension.

The Oklahoma Statute 57 O.S.A. § 138 was amended by the legislature in 1970, and the highest Court of the State of Oklahoma has consistently held that even though an instruction on good time credits under the previous statute is error, that where such instruction was given after a determination of guilt of the crime charged had been made, such instruction is not reversible error and justice requires only a reduction of sentence. *Kerr v. State, Okl. Cr.*, 462 P.2d 268 (1969); *Williams v. State, Okl. Cr.*, 461 P.2d 997 (1969).

Federal Courts will generally follow interpretations of the Constitution and the laws of a state by the highest Court of the State

unless such interpretation is inconsistent with the fundamentals of liberty and justice. *Newman v. Rodriguez*, 375 F.2d 712 (10th Cir. 1967). This Court finds that petitioners have not been deprived of a fair trial in the constitutional sense so as to provide relief by Federal habeas corpus. *Linebager v. State of Oklahoma*, 404 F.2d 1092 (10th Cir. 1966); *Ortiz v. Baker*, 411 F.2d 263 (10th Cir. 1969).

The Court finds that each of the petitioners was found guilty of the crime charged against him in the first stage of a jury trial. That, in the second stage of the trial, after guilt was established, sentence within the permissible range of punishment for the offense charged under Oklahoma Statute was imposed. The Court further finds that this challenged instruction on good time credits occurred in the second, sentencing stage of the proceedings after guilt had been established; and therefore, the instruction did not deprive petitioners of due process, a fair trial, or equal protection of the law in the federal constitutional sense. The modification of each sentence served to correct any error that may have been committed, i.e., any increase in punishment the jury may have assessed because of the instruction. The sentence as originally imposed, as well as the reduced sentence, in each case is within the statutory limits of punishment fixed for the crime of which the defendant had been found guilty. The punishment prescribed is not cruel and unusual. Therefore, the sentence is not a basis for habeas corpus relief in this Court. The Court further finds that there is no constitutional requirement that prisoners charged under the same statute, or different statutes, should receive like or comparable sentences, so long as each sentence imposed is within the range provided by law. For these reasons above set forth, the Court finds that an evidentiary hearing is not required and that the petition for writ of habeas corpus for each petitioner is frivolous, without merit, and should be denied and dismissed.

IT IS, THEREFORE, ORDERED that Ray H. Page, Warden, Oklahoma State Penitentiary, be and he is hereby added as the proper party respondent herein.

IT IS FURTHER ORDERED that these five causes of action be and they are hereby consolidated and the Clerk is directed to effect the necessary steps to consolidate them.

IT IS FURTHER ORDERED that this consolidated action, including the petitions for writ of habeas corpus of James C. Byrne, Leonard Fitchew, Louis Kerr, Vernon Jerrell Muck a/k/a Jerry Wayne Kennady, and Charles Shoemaker, be and it is hereby denied and the cause of action herein, as alleged by each petitioner, is dismissed.

Dated this 24th day of September, 1971, at Tulsa, Oklahoma.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA.

BOWLINE CONSTRUCTION COMPANY,
INC., a corporation,

Plaintiff,

-vs-

PRECISION POLYMERS, INC., a
corporation,

Defendant.)

No. 70-C-369 ✓

E I L E D

SEP 27 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

ORDER

This matter coming on to be heard this date upon the stipulation of dismissal of the parties on file herein and the Court being fully advised in the premises finds that said stipulation should be sustained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the amended complaint of the Plaintiff on file herein be and the same, together with the Defendant's answer thereto, is dismissed, without prejudice.

Luther Bohanon
LUTHER BOHANON, JUDGE

APPROVED:

Paul B. Lamm
Attorney for Plaintiff

Samuel J. Simpson
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT, STATE OF OKLAHOMA

W. E. GELLER

Plaintiff,

v.

ATLAS PLUMBING CO., INC.
a Oklahoma Corporation.

Defendant

No. 71-C-24

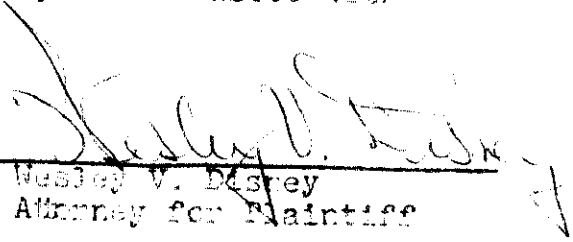
FILED

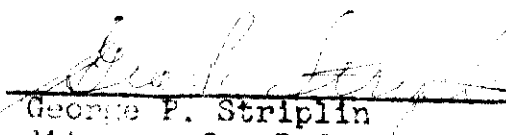
SEP 22 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

STIPULATION FOR DISMISSAL

Comes now the parties to the above entitled action
by and through their attorneys of record, and stipulate
that the above entitled action may be dismissed with
prejudice to a future action.


Wesley V. Desrey
Attorney for Plaintiff


George P. Striplin
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
TEXAS & PACIFIC RAILWAY CO.,)
INC. and IDA MAE MARIE CUNNINGHAM)
REED et al)
)
Defendants.)

Case No. Civil Action
No. 70-C-329

FILED

SEP 22 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

NOW on this 9th day of September, 1971, the above entitled and numbered cause came on before the undersigned Judge of the District Court of the United States in and for the Northern District of Oklahoma. Plaintiff was represented by Mr. Jack Short, Assistant United States District Attorney, defendant, Ida Mae Marie Cunningham Reed appeared not in person but by and through her Attorney, Patrick A. Williams, 1200 Petroleum Club Building, Tulsa, Oklahoma.

Counsel for both plaintiff and defendant informed the court that the original complaint named said defendant as a party to said litigation and described certain real property which purported to include real estate owned by this defendant known as:

Lot 1, Block 114, in the City of Pawhuska,
Osage County, Oklahoma.

thereafter, and on January 4, 1971, an amendment to complaint was filed by plaintiff redescribing the real property involved in this litigation. The court finds that from statement of counsel for both plaintiff and defendant that the real property of the defendant, Ida Mae Marie Cunningham Reed is not involved in this litigation and that she should be discharged as a defendant and said cause dismissed as to her.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED
BY THE COURT that the defendant Ida Mae Marie Cunningham Reed should be and she hereby is discharged and dismissed without further liability as

a party defendant in the above entitled and numbered cause by virtue of the
fact that real estate owned by said defendant is not involved in this action.

Ruthie Bohannon
United States District Judge

APPROVED AS TO FORM:

Nathan G. Graham, United States
Attorney, Northern District of Oklahoma

by

Jack Short
Jack Short

Patrick A. Williams
Patrick A. Williams

Attorney for Defendant, Ida Mae Marie Cunningham Reed

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WILLIAM G. FISCHER,
Petitioner,

v.

RAY H. PAGE, Warden, O.S.P.
STATE OF OKLAHOMA, ET AL.,

Respondents.

71-C-321

FILED
SEP 20 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

THE COURT, having examined the Petition for Writ of Habeas Corpus filed herein by William G. Fischer, finds that the applicant has not exhausted the remedies available in the courts of the State of Oklahoma. Absent a showing of unavailability or ineffectiveness of state procedures, a state prisoner is required to afford state courts the opportunity to consider and resolve claims of constitutional infirmity before raising these claims in federal court. 28 U.S.C.A., Sec. 2254 and Hoggatt v. Page, 432 F.2d 41 (CA 10 1970). Although the petitioner, William G. Fischer, did pursue an unsuccessful direct appeal from the state judgment of conviction, he has chosen to ignore the state post-conviction remedy provided by 22 O.S.A., Sec. 1080 et seq. The institution of a post-conviction action in the state sentencing court is a prerequisite to the granting of habeas relief in a federal court. (See Brown v. Crouse, 395 F.2d 755 [CA 10 1968] and Omo v. Crouse, 395 F.2d 757 [CA 10 1968].)

IT IS THEREFORE ORDERED:

1. That the petition for habeas corpus is dismissed;
2. That a copy of this order be mailed by the clerk of this court to the petitioner;
3. That a copy of this order be mailed by the clerk

to the respondents by mailing the same to the Attorney General
of the State of Oklahoma.

DATED THIS 17th DAY OF SEPTEMBER, 1971.

Luther Bohanow
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BENSON W. GRANT,

Plaintiff,

vs.

ELLIOT RICHARDSON, Secretary of
Health, Education, and Welfare of
the United States of America,

Defendant.

CIVIL ACTION NO. 70-C-375

FILED

SEP 16 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

J U D G M E N T

This matter came on for consideration before the Court and the
issues having been duly considered and a decision having been duly rendered,

IT IS ORDERED, ADJUDGED, AND DECREED that the Motion for Summary
Judgment of the Defendant is granted and the Motion for Summary Judgment of
the Plaintiff is denied.

Dated this 16 day of September, 1971.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CARSON W. NEWTON, JERRY P.
NEWTON and THOMAS A. AMATO,

Plaintiffs,

Civil Action File
No. 70-C-310

vs.

FRED G. LUKE,

Defendant.

FILED

SEP 16 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

ORDER DECREERING DEFENDANT IN DEFAULT
AND DEFAULT JUDGMENT

On this 8th day of September, 1971, pursuant to regular assignment, this cause came on for hearing upon the formal application of plaintiffs for an order decreeing defendant in default and for default judgment; and the plaintiffs, Carson W. Newton, Jerry P. Newton and Thomas A. Amato, appeared by their attorney, Hicks Epton; and the Court having examined the files in the cause and having received in evidence and considered the supporting documents submitted by plaintiffs and having heard evidence offered in open court and being fully and truly advised in the premises FINDS, CONCLUDES, ORDERS, ADJUDGES AND DECREES:

1. The defendant, Fred G. Luke, was duly and personally served with process in this cause in Tulsa County, Oklahoma on January 26, 1971 and has since failed, neglected and refused to plead, answer, or otherwise defend this action. He has never entered an appearance in the cause either personally or by attorney. Notice to the Defendant of this hearing was unnecessary. The defendant is not in the military service of the United States. Accordingly, the defendant is adjudged in default.

2. Defendant, Fred G. Luke, is not entitled to a jury. The plaintiffs, Carson W. Newton, Jerry P. Newton and Thomas A. Amato, are jointly entitled to and they are hereby decreed a judgment against the defendant,

Fred G. Luke, for Four Hundred Fourteen Thousand, Five Hundred Forty Seven and .91/100 Dollars (\$414,547.91) and attorney's fees of Four Thousand Four Hundred Sixty Dollars (\$4,460.00) and expenses necessarily incurred herein of Three Hundred Fifty Three Dollars (\$353.00), making a total of fees and expenses of Four Thousand Eight Hundred Thirteen Dollars (\$4,813.00); and judgment therefor is hereby entered against said defendant and in favor of plaintiffs for the total sum of Four Hundred Nineteen Thousand, Seven Hundred Thirteen and .91/100 Dollars (\$419,713.91), and that this judgment bear interest at 10% per annum until paid, as provided by Title 15 Oklahoma Statute 274.

3. The indebtedness of the defendant was created by his fraud and by his defalcation while acting in a fiduciary capacity, as defined by 11 United States Code, Article 35; accordingly, this judgment shall not be dischargeable in bankruptcy or affected by any discharge in bankruptcy.

4. The defendant and his agents, servants, associates and employees are hereby restrained and enjoined from selling, assigning or otherwise negotiating, in any and all manners and methods, and by whatever devise, any notes, lease contracts, operating agreements, or other instruments bearing the signatures or endorsements of the plaintiffs or any of them or of Martin LeAnce as their agent and attorney in fact.

Dated 9/16/71

Lred J. J. J. J.
Judge

FILED

SEP 16 1971

**JOHN H. POE, Clerk
U. S. DISTRICT COURT**

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)	
)	
Plaintiff,)	CIVIL ACTION NO. 69-C-190
)	
vs.)	Tract No. 434M
)	
20.00 Acres of Land, More or Less,)	(All interests except overriding
Situate in Rogers County, State of)	royalty interest)
Oklahoma, and Ruth Geneva Conn, et)	
al., and Unknown Owners,)	
)	
Defendants.)	

J U D G M E N T

NOW, on this 15 day of September, 1971, this matter comes on for disposition on application of plaintiff, United States of America, for entry of Judgment on Stipulations of the parties agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for plaintiff, finds that:

2.

This Judgment applies to all interests, except the overriding royalty interest, in the estate condemned in Tract No. 434M, as such estate and tract are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected either personally, or by publication notice, as provided by Rule 71A of Federal Rules of Civil Procedure on all parties defendant in this cause who are interested in subject tract.

5.

The Acts of Congress set out in paragraph 2 of the Complaint herein give the United States of America the right, power, and authority to condemn for public use the subject property. Pursuant thereto, on July 31, 1969, the United States of America filed its Declaration of Taking of a certain estate in the above named tract of land and title to such property should be vested in the United States of America as of the date of filing such Declaration of Taking.

6.

Simultaneously with filing of the Declaration of Taking there was deposited in the Registry of this Court, as estimated compensation for the taking of the subject property, a certain sum of money, and part of this deposit has been disbursed as set out below in paragraph 12.

7.

On the date of taking in this action, the owners of the subject property were the defendants whose names are shown below in paragraph 12. Such named defendants are the only persons asserting any claim to the subject property. All other persons having either disclaimed or defaulted, such named defendants are entitled to receive the just compensation awarded by this judgment.

8.

The owners of the subject property and the United States of America have executed and filed herein Stipulations as to Just Compensation wherein they have agreed that just compensation for the taking of their respective interests in subject property is in the amounts shown as compensation in paragraph 12 below, and such Stipulations should be approved.

9.

This judgment will create a surplus in the deposit of estimated just compensation for the taking of subject property, and such surplus should be refunded to the plaintiff. The calculation of such surplus is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED, AND DECREED that the United States of America has the right, power, and authority to condemn for public use the tract named in paragraph 2 above, as such tract is particularly described in the Complaint filed herein; and such tract, to the extent of all interests, except the overriding royalty interest, in the estate described in such Complaint, is condemned, and title thereto is vested in the United States of America as of July 31, 1969, and all defendants herein and all other persons are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED, AND DECREED that on the date of taking, the owners of the subject property were the defendants whose names

appear below in paragraph 12, and the right to receive the just compensation for the taking of such property is vested in the parties so named.

12.

It Is Further ORDERED, ADJUDGED, AND DECREED that the Stipulations as to Just Compensation, described above in paragraph 8, hereby are confirmed, and the sum thereby fixed is adopted as the award of just compensation for the taking of subject property, as shown by the following schedule:

TRACT NO. 434M
(All interests except overriding royalty interest)

1. Lessor (royalty) interest:

Owners:

Ruth Geneva Conn 1/2
Charles Haven Caldwell 1/2

Award of just compensation,
pursuant to stipulations \$360.00 \$360.00

Deposited as estimated compensation . . . 360.00

Disbursed to owners:

To Conn \$180.00
To Caldwell \$180.00
Total \$360.00

2. Working interest:

Owner: Supreme Petroleum Incorporated

Deposited as estimated compensation \$1,275.00

Award of just compensation,
pursuant to stipulation 500.00 . . . \$500.00

Disbursed to owner 500.00

Balance due to owner none

Deposit surplus \$775.00

13.

It Is Further ORDERED that the Clerk of this Court shall disburse, from the deposit for the subject tract, the deposit surplus created by this

judgment, in the amount of \$775.00, to the Treasurer of the United States of America.

/s/ Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

/s/ Hubert A. Marlow

HUBERT A. MARLOW
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,

Plaintiff,

vs.

30.75 Acres of Land, More or Less,
Situate in Rogers County, State of
Oklahoma, and Alta McSpadden, et al.,
and Unknown Owners,

Defendants.

CIVIL ACTION NO. 69-C-188

Tracts Nos. 415M and 418M

(Working interest only)

FILED

SEP 16 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

J U D G M E N T

1.

Now, on this 15 day of September, 1971, this matter comes on

for disposition on application of the plaintiff, United States of America, for entry of judgment on a stipulation of the parties, filed herein on August 31, 1971, and the Court after having examined the files in this action and being advised by counsel for the plaintiff finds that:

2.

The Court has jurisdiction of the parties and the subject matter of this action.

3.

This judgment applies to the working interest only in the estate taken in Tracts Nos. 415M and 418M as such estate and tracts are described in the Complaint filed in this case.

4.

Service of Process has been perfected either personally or by publication notice as provided by Rule 71A of the Federal Rules of Civil Procedure on all parties defendant in this cause, who are interested in subject property.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the subject property. Pursuant thereto, on July 31, 1969, the United States of America filed its Declaration of Taking of a certain estate in the above named tracts of land, and title to such property should be vested in the United States of America, as of the date of filing such Declaration of Taking.

6.

Simultaneously with filing of the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the taking of the subject property a certain sum of money, and part of this deposit has been disbursed as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such defendant is the only person asserting any claim to the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and have filed herein a stipulation as to just compensation wherein they have agreed that just compensation for the taking of subject property is in the amount shown as compensation in paragraph 12 below, and such stipulation should be approved.

9.

This judgment will create a surplus in the deposit of estimated just compensation for the taking of subject property, and such surplus should be refunded to the plaintiff. The calculation of such surplus is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED AND DECREED that the United States of America has the right, power, and authority to condemn for public use the subject Tracts as described in the Complaint filed herein, and such property, to the extent of the working interest only in the estate described in such Complaint, is condemned, and title thereto is vested in the United States of America, as of July 31, 1971, and all defendants herein and all other persons are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED AND DECREED that on the date of taking in this case, the owner of the subject property was the defendant whose name appears below in paragraph 12, and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED AND DECREED that the stipulation as to just compensation, described above in paragraph 8, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the taking of subject property, as shown by the following schedule:

TRACTS NOS. 415M and 418M
(Working interest only)

Owner: Supreme Petroleum Incorporated

Deposited as estimated compensation \$917.00

Award of just compensation,
pursuant to stipulation 500.00 \$500.00

Disbursed to owner 500.00

Balance due to owner none

Deposit surplus \$417.00

13.

It Is Further ORDERED, that the Clerk of this Court shall disburse, from the deposit for the subject tract, the deposit surplus created by this judgment, in the amount of \$417.00, to the Treasurer of the United States of America.

/s/ Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

/s/ Hubert A. Marlow

HUBERT A. MARLOW
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,

Plaintiff,

vs.

50.00 Acres of Land, More or Less,
Situate in Rogers County, State of
Oklahoma, and Julia J. Harmon, et
al., and Unknown Owners,

Defendants.

CIVIL ACTION NO. 69-C-189

Tract No. 428M

(Working interest only)

FILED

SEP 16 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

J U D G M E N T

1.

NOW, on this 15 day of September 1971, this matter comes on for disposition on application of plaintiff, United States of America, for entry of judgment on a stipulation of the parties filed herein on August 31, 1971, and the Court, after having examined the files in this action and being advised by counsel for plaintiff, finds that:

2.

This judgment applies only to the working interest in the estate condemned in Tract No. 428M, as such estate and tract are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of process has been perfected either personally, or by publication notice, as provided by Rule 71A of the Federal Rules of Civil Procedure on all parties defendant in this cause who are interested in subject tract.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the subject property. Pursuant thereto, on July 31, 1969, the United States of America filed its Declaration of Taking of a certain estate in the above named tract of land, and title to such property should be vested in the United States of America as of the date of filing such Declaration of Taking.

6.

Simultaneously with filing of the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the taking of the subject property a certain sum of money, and part of this deposit has been disbursed as set out below in paragraph 12.

7.

On the date of taking in this action, the owner of the subject property was the defendant whose name is shown below in paragraph 12. Such defendant is the only person asserting any claim to the subject property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and have filed herein a stipulation as to just compensation wherein they have agreed that just compensation for the taking of subject property is in the amount shown as compensation in paragraph 12 below, and such stipulation should be approved.

9.

This judgment will create a surplus in the deposit of estimated just compensation for the taking of subject property, and such surplus should be refunded to the plaintiff. The calculation of such surplus is set out below in paragraph 12.

10.

It Is, Therefore, ORDERED, ADJUDGED AND DECREED that the United States of America has the right, power, and authority to condemn for public use the subject Tract as described in the Complaint filed herein, and such property, to the extent of the working interest only in the estate described in such Complaint, is condemned, and title thereto is vested in the United States of America, as of July 31, 1971, and all defendants herein and all other persons are forever barred from asserting any claim to such property.

11.

It Is Further ORDERED, ADJUDGED AND DECREED that on the date of taking in this case, the owner of the subject property was the defendant whose name appears below in paragraph 12, and the right to receive the just compensation for the taking of such property is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED AND DECREED that the stipulation as to just compensation, described above in paragraph 8, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the taking of subject property, as shown by the following schedule:

TRACT NO. 428M
(Working interest only)

Owner: Supreme Petroleum Incorporated

Deposited as estimated compensation \$510.00

Award of just compensation,
pursuant to stipulation 500.00 . . . \$500.00

Disbursed to owner 500.00

Balance due to owner none

Deposit surplus \$ 10.00

13.

It Is Further ORDERED, that the Clerk of this Court shall disburse, from the deposit for the subject tract, the deposit surplus created by this judgment, in the amount of \$10.00, to the Treasurer of the United States of America.

/s/ Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

/s/ Hubert A. Marlow

HUBERT A. MARLOW
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
OF OKLAHOMA

GORDON GRAALMAN,)
)
 Plaintiff,)
)
 vs.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

No. 71-C-225

FILED

SEP 15 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

Upon the application of the plaintiff, it is hereby ordered that the above
styled action be and the same is hereby dismissed.

Dated this 15 day of Sept, 1971.

W. Allen E. Barrow
UNITED STATES JUDGE

IEU:lg
8/30/71

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

LEVI STRAUSS & CO., a Corporation)
)
Plaintiff)
)
vs.)
)
CAYCE ELLARD, a sole trader, d/b/a)
CASEY'S DEPARTMENT STORE,)
)
Defendant)

Civil Action
No. 71-C-9

FILED
SEP 15 1971

ORDER DISMISSING ACTION WITHOUT
PREJUDICE

JOHN H. POE, Clerk
U. S. DISTRICT COURT

Upon the joint stipulation filed herein by the parties involved
herein and for good cause shown:

IT IS HEREBY ORDERED BY THIS COURT that the above styled and
numbered action be and the same is hereby dismissed without prejudice and
at the plaintiff's cost herein.

Dated at Tulsa, Oklahoma, this 11 day of Sept, 1971.

11/ Allen E. Barrow
United States District Judge

APPROVED AS TO FORM:

UNGERMAN, GRABEL, UNGERMAN & LEITER

By [Signature]
Attorneys for Plaintiff

[Signature]
Mitchell O'Donnell,
Attorney for Defendant

LAW OFFICES
UNGERMAN,
GRABEL,
UNGERMAN
& LEITER
SIXTH FLOOR
WRIGHT BUILDING
TULSA, OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PAUL W. POLIN,

Plaintiff,

vs.

ANDRESEN & CO., INCORPORATED,
A Delaware Corporation,

Defendant and
Third-Party Plaintiff,

vs.

INSURANCE COMPANY OF NORTH AMERICA,
a corporation,

Third-Party Defendant.

CIVIL ACTION

NO. 69-308

FILED
SEP 15 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

On stipulation of the parties it is ordered that the
third-party complaint of defendant and third-party plaintiff
against third-party defendant, Insurance Company of North America
be and the same is hereby dismissed on the merits.

W. Allen G. Barron
UNITED STATES DISTRICT JUDGE

APPROVED:

R. B. McDermott
R. B. McDERMOTT
Attorney for Defendant and Third-Party
Plaintiff Andresen & Co.

Edgar Fenton
EDGAR FENTON
Attorney for Third-Party Defendant
Insurance Company of North America

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MARVIN MORRIS SAM, #73935,

Petitioner,

-vs-

TULSA COUNTY DISTRICT COURT,
State of Oklahoma,

Respondents.

Case No. 71-C-317 Civil

FILED

SEP 14 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

O R D E R


Petitioner seeks leave to proceed in forma pauperis in this Court and as his application is properly supported by an affidavit of poverty, the same should be granted. Petitioner asks this Court to issue a writ of Mandamus compelling the Respondent Tulsa County District Court to sell him a casemade or transcript of the trial in which he was convicted of an offense, the sentence for which he is now serving in the Oklahoma State Penitentiary.

This Court is without authority to issue a writ of mandamus to a state court where the same is not in aid of jurisdiction otherwise acquired. 28 U.S.C. 1651; Haggard v. State of Tennessee, 421 F. 2d 1384 (Sixth Cir. 1970); Gurley v. Superior Court of Mecklenburg County, 411 F. 2d 586 (Fourth Cir. 1969). Treating Petitioner's application here as for a writ of habeas corpus based on denial of appeal rights, the Court declines to entertain the same for the reason Petitioner does not show the required exhaustion of state judicial remedies. 28 U.S.C. 2254(b). He states only that the state court has refused to acknowledge his letters. He does not indicate that he has applied for and been denied judicial

relief by the institution of a proceeding of any nature.

Petitioner's Application for Leave to Proceed in Forma Pauperis is granted; Petitioner's Application for Writ of Mandamus is denied.

It is so ordered this 14 day of September, 1971.


Fred Daugherty
United States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CLAUDE E. MILLER,)
)
Plaintiff,)
)
vs.)
)
A. H. ROBINS, INC., a)
foreign corporation,)
)
Defendant.)

NO. 71-C-156

FILED
SEP 14 1971
JOHN H. POE, Clerk
U. S. DISTRICT COURT

O R D E R

NOW on this 9th day of September, 1971, there came on for hearing pursuant to regular assignment the Motion of the Defendant for Summary Judgment. Plaintiff appeared by and through his attorney, Tom Hendren, and the Defendant appeared by and through his attorney, Alfred B. Knight. After extensive oral argument, the Court being fully advised in the premises, the Court finds that said complaints should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the complaint of the Plaintiff should be and hereby is dismissed.

APPROVALS:

Luther Bohanan
JUDGE

Tom Hendren
Attorney for Plaintiff

Alfred B. Knight
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JEWEL J. DAVIDSON,
444-05-6575,

Plaintiff,

v.

THE SECRETARY OF HEALTH, EDUCATION,
AND WELFARE,

Defendant.

Case No. 71-C-222 Civil

FILED

SEP 13 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

O R D E R

Defendant moves to dismiss Plaintiff's action for the reason the same was not filed within sixty days of the final decision of the Defendant, as required by 42 U.S.C.A. §405(g) and (h). Plaintiff refers to Rule 6(e), F.R.Civ.P., 28 U.S.C.A. and asserts that as the notice of the Appeals Council denying his claim was served by mail, three days must be added to the period of sixty days and that therefore the action was timely filed.

Plaintiff's assertion is not correct. Rule 82, F.R.Civ.P., 28 U.S.C.A. admits of no interpretation of the rules which will extend jurisdiction of this Court beyond its statutory limits. Rule 6(e) is not available to extend the sixty day period of time, which is a jurisdictional requirement. Ewing v. Risher, 176 F. 2d 641 (Tenth Cir. 1949); Small v. Gardner, 390 F. 2d 186 (First Cir. 1968). Even one day's delay in filing the action is fatal. Zeller v. Folson, 150 F. Supp. 615 (N.Y. 1956). However, even by Plaintiff's reckoning, this action was out of time. It was filed on June 15, 1971, sixty-four days after the decision of the Appeals Council was mailed to Plaintiff on April 12, 1971.

Defendant's Motion to Dismiss is granted, and Plaintiff's action is hereby dismissed.

It is so ordered this 13 day of September, 1971.

Fred Daugherty
Fred Daugherty
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

CAROLYN QUINTON,

Plaintiff,

-vs-

MONROE DAWES FIFE, JR.,

Defendant.

NO. 71-C-181

FILED

SEP 8 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

O R D E R

This matter comes on for hearing on the Motion of both the plaintiff and the defendant jointly moving the Court for a Order of Dismissal; the Court being fully advised in the premises finds that said matter has been concluded and that this Court dismisses the above-entitled action with prejudice to any future action.

Katherine Bohannon
JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PATRICIA BARROWS,

Plaintiff,

-vs-

DAVE T. FAULKNER, Sheriff of Tulsa
County, State of Oklahoma; CHARLES
GARY JAMES, Deputy Sheriff of Tulsa
County, State of Oklahoma; CHARLES
MAYBEE, Deputy Sheriff of Tulsa
County, State of Oklahoma; and
WESTERN SURETY COMPANY, a
Foreign Insurance Company,

Defendants.

Civil Case
No. 70-C-120

FILED
IN OPEN COURT
SEP 8 - 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

ORDER

The parties hereto, Patricia Barrows, for herself and by C. Jack Maner, Attorney at Law and Andrew T. Dalton, Jr., Attorney at Law, and representing the plaintiff and the Oklahoma Civil Liberties Union; and the defendants, Charles Gary James and Charles Maybee and their attorney, Andrew B. Allen, Assistant District Attorney and Larry L. Oliver, Attorney at Law, having stipulated to a dismissal with prejudice to the filing of any further action, the Court hereby orders this action dismissed with prejudice to the filing of any further action.

IT IS SO ORDERED this 8th day of September, 1971.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NATIONAL TRAILER CONVOY, INC.,)
a corporation,)

Plaintiff,)

vs.)

No. 71-C-47

WOODALL PUBLISHING COMPANY,)
a corporation,)

Defendant.)

DISMISSAL

This cause and the counterclaim are hereby dismissed with prejudice based upon the mutual stipulation for dismissal filed by the parties.

DATED this 3 day of September, 1971.

David J. [Signature]
United States District Judge

FILED
1971
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

-v-

BOARD OF EDUCATION, INDEPENDENT
SCHOOL DISTRICT NO. 1, TULSA
COUNTY, OKLAHOMA, et al.,

Defendants.

FILED

SEP 3 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

CIVIL NO. 68-C-185

JUDGMENT

The above-entitled cause, pursuant to assignment, was heard on July 27-28, 1971. Thereafter, on August 17, 1971, the Court filed herein its Memorandum Opinion setting forth its findings of facts and conclusions of law as provided by Rule 52 of the Federal Rules of Civil Procedure.

It is accordingly hereby ORDERED, ADJUDGED AND DECREED that the Pre-Trial Orders entered by the Court on June 25, 1971, and July 23, 1971, are hereby incorporated by reference and made a part of this JUDGMENT to the same extent as though fully set out herein. It is further ORDERED that defendants implement by the commencement of the 1971-72 school year the portions of the Amended Plan of Desegregation filed with the Court on

March 5, 1971, which pertain to student assignment or attendance areas of the elementary schools. Defendants are directed to reexamine the student assignment provisions of their Amended Plan with respect to Bunche, Dunbar, Johnson and Woods Elementary Schools which the Court finds are de jure segregated schools and submit to the Court by November 15, 1971, a new desegregation plan for these four schools or show cause why they shall not be the subject of more desegregation. The Court is without jurisdiction to Order the desegregation of Burroughs, Emerson, Frost, Hawthorne and Whitman Elementary Schools since the Court finds that these schools are de facto segregated schools in that the predominantly black enrollment at these schools is not the result of any actions of the defendant.

The Court will retain jurisdiction of this case until such time as it is clear that a unitary system of schools has been achieved by the school district.

U. S. District Court Judge

Approved as to form

Bernard H. Shapiro
Attorney

Department of Justice

David H. East
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ARBROOK, INC.,

Plaintiff,

vs.

POLY-VERSION, INC.,
WILLIAM E. BAAB, AND
HARLTON J. NORRIS,

Defendant.

CIVIL ACTION NO. 71-C-212

FILED

SEP 3 1971

ORDER OF DISMISSAL

JOHN H. POE, Clerk
U. S. DISTRICT COURT

Now on this 3rd day of Sept, 1971, a Stipulation of Dismissal having been signed by all parties who have appeared in this action pursuant to Rule 41, Federal Rules of Civil Procedure and said stipulation having been filed of record in the above entitled cause,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the above styled matter presently pending against all defendants be dismissed with prejudice to further cause of action. Each of the parties hereto to bear their respective costs incurred herein, including attorneys fees.


FRED DAUGHERTY

Federal District Judge

APPROVED AS TO FORM:


JAMES C. LANG

Attorney for Defendants


JAMES O. ELLISON

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

M. B. BALDRIDGE and LEO W. IMHAUSER,)
)
 Plaintiffs,)
)
 vs.)
)
 McPIKE, INC., a Missouri Corporation;)
 NILES & MOSER CIGAR COMPANY, a Missouri)
 Corporation; THE NILES AND MOSER CIGAR)
 COMPANY OF COLORADO, a Colorado Cor-)
 poration; SOUTHWEST CIGAR COMPANY, a)
 Texas Corporation; MERLE C. SPERRY;)
 R. O. STENZEL; WILLIAM G. STENZEL; and)
 JOHN STENZEL,)
)
 Defendants.)

No. 71-C-221 ✓

E I L E D

SEP 1 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

O R D E R

This cause came on for consideration by the Court on July 27, 1971, upon the defendants' plea to the jurisdiction and venue and Motion to Dismiss. The plaintiffs were present and represented by Holmes Baldridge, Denver, Colorado, and Royce Savage, Tulsa, Oklahoma; and the defendants were present and represented by their attorneys, B. W. Tabor and Bill V. Wilkinson, Tulsa, Oklahoma, and Kent Whittaker of Kansas City, Missouri.

The Court having heard arguments and statement of counsel and having considered the Briefs filed in said cause is of the opinion and holds that this Court does not have jurisdiction of the defendants, McPike, Inc., a Missouri Corporation; The Niles and Moser Cigar Company of Colorado, a Colorado Corporation; Southwest Cigar Company, a Texas Corporation, and Merle C. Sperry, R. O. Stenzel, William G. Stenzel and John Stenzel, inasmuch as no one of these defendants owed any obligation to the plaintiffs and had no connection with the plaintiffs all as shown by the Complaint, and the Complaint affirmatively shows that plaintiffs were the employees of Niles & Moser Cigar Company, a Missouri Corporation.

The Court further finds and holds that since the defendants have challenged the jurisdictional amount in controversy, it is incumbent on and the Court orders that the plaintiffs within 30 - - days from this date come forth with sufficient proof to show that this Court does have jurisdiction as to the amount in controversy.

In the Complaint plaintiffs allege that each of the named defendants entered into a conspiracy calculated to deprive plaintiffs of their just portion of the employees benefit plan and amendments thereto (Exhibit "A" attached to Complaint) and to further deprive them of the benefits of said plan when the plan was terminated. Considering the relationship between the parties, the Complaint, and the employees' benefit plan, the Court is of the opinion that the allegations concerning a conspiracy are not sufficient or specific so as to show a conspiracy as alleged. The plaintiffs' cause of action, if any they have, is against their own employer, Niles & Moser Cigar Company, a Missouri Corporation, or Merle C. Sperry, Trustee of the "Employees' Joint Pension Plan," or both.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss for want of jurisdiction filed herein by the defendants, McPike, Inc. a Missouri Corporation, The Niles and Moser Cigar Company of Colorado, a Colorado Corporation, Southwest Cigar Company, a Texas Corporation, Merle C. Sperry, R. O. Stenzel, William G. Stenzel, and John Stenzel, should be, and the same is hereby sustained.

IT IS THE FURTHER ORDER of the Court that the plaintiffs within the time mentioned above bring forth such proof as they may have to show that this Court has jurisdiction with respect to the amount in controversy between the remaining defendant and the plaintiffs.

Dated this 30th day of August, 1971.

Luther Brown
United States District Judge

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

RENTAL TRANSPORTATION, INC.

Plaintiff,

-vs-

No. C-71-244

S & W SALES, A Partnership composed
of JAMES A. SARGENT and KEN WHITE,

Defendants.

Notice of
~~VOLUNTARY~~ DISMISSAL

Comes now the Plaintiff, and in accordance with Court
Rule 41A, voluntarily dismisses its complaint on file herein
against the named defendants.

GARRISON & BROWN

FILED

SEP 2 1971

JOHN H. POE, Clerk
U. S. DISTRICT COURT

By:

Thomas W. Brown

Thomas W. Brown, Attorney for
Plaintiff.

415 East Fifth Street

Post Office Box 1217

Bartlesville, Oklahoma 74003